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## **COMMON EXCLUSIONS FROM CHANGE IN OWNERSHIP REASSESSMENT TREATMENT UNDER CALIFORNIA LAW**

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### Introduction

California has over a dozen transfers of real property from one party to another that are excluded from treatment as changes in ownership.<sup>1</sup> California Revenue and Taxation (R&T) Code Section 60 defines “changes in ownership” as a “transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.” Generally, a change in ownership subjects the recipient of the property to tax reassessment treatment.<sup>2</sup> Statutory exclusions from change in ownership treatment are enumerated in various sections of the R&T Code.<sup>3</sup>

This informational reference article provides an overview of five of the most common exclusions for:

- Inter-spousal transfers
- Transfers between registered domestic partners
- Parent-child transfers
- Grandparent-grandchild transfers
- Transfers of the base year value (Proposition 13 value) for persons 55 or older

### Discussion

#### Inter-spousal transfers:

All transfers between spouses during the marriage are excluded from change in ownership treatment.<sup>4</sup> Additionally, transfers between spouses that are pursuant to a property settlement or dissolution of marriage agreement do not trigger reassessment treatment.<sup>5</sup> Finally, transfers between spouses that occur because of the death of a spouse are also excluded from reassessment.<sup>6</sup>

There is no claim form required to be filed with the respective assessor offices by either spouse to establish entitlement to the inter-spousal exclusion. However, supporting documentation, such as a divorce decree, settlement agreement, or death certificate can be requested by an assessor office in the county in which the property is located following such transfers.

#### Transfers between registered domestic partners:

After years of disparate treatment between domestic partners and married partners, Senate Bill 565 (Migden, Chapter 416, Statutes of 2005) provides that the same exclusions that apply to inter-spousal transfers apply to transfers between domestic partners registered with the Secretary of State. As of January 1, 2006, all transfers between registered domestic partners are not subject to reassessment as changes in ownership under California law.<sup>7</sup> As with spouses, transfers between domestic partners that are pursuant to a property settlement or domestic partner dissolution of agreement do not trigger reassessment treatment.<sup>8</sup> Similarly, transfers that occur because of the death of a registered domestic partner are also excluded from reassessment.<sup>9</sup>

In the case of a transfer arising due to the death of a domestic partner, transfers that occurred after January 1, 2003 are excluded from reassessment.<sup>9</sup> Transfers that occurred between 2003 and 2006 are governed by Property Tax Rule 462.240, which implements AB 2216 (Keeley, Chapter 477, Statutes of 2002).

The domestic partner transfer exclusion functions identically to the inter-spousal exclusion. No claim form is required to be filed with the respective assessor offices by either domestic partner to establish entitlement to the domestic partner exclusion. However, supporting documentation, such as a Declaration of Domestic Partnership, domestic partner dissolution decree, settlement agreement, or death certificate can be requested by an assessor office in the county in which the property is located following such transfers.

If a county assessor mistakenly reassesses a domestic partner's property, the domestic partner can correct the action by filing an Application for Changed Assessment with the county assessor and checking the boxes indicating that no change in ownership occurred and the filer is a domestic partner.

#### Parent-child transfers:

The California voters passed Proposition 58 in November 1986, which allows certain transfers of a principal residence and other property between parents and children to be excluded from change in ownership treatment.<sup>10</sup> The exclusion applies to transfers made on or after November 6, 1986 and can be from parent to child or vice versa.<sup>11</sup> If the transfer is made because someone dies, the date of death is considered to be the date the property is transferred.<sup>12</sup>

Excludable property includes the principal residence of the parent or parents and child, but does not extend to transfers between siblings.<sup>13</sup> There is no limit on the value of the transferred property when it is the principal residence.<sup>14</sup> In addition to the transfer exclusion for a principal residence, the exclusion also applies to transfers of non-principal residence property between parents and children.<sup>15</sup> However, transfers of non-principal residence property is subject to a \$1 million limit per parent or child on the taxable value of the property.<sup>16</sup> For example, two parents can transfer to a child their principal residence without limitation on its taxable value, and can combine the \$1 million exclusion for a limit of \$2 million of taxable value on the transfer of non-principal residence property.

The exclusion for transfers between parents and children also applies to transfers between certain trusts and a parent or child.<sup>17</sup> However, the parent-child exclusion does not cover transfers between legal entities such as partnerships and corporations that are owned by the parents and children.<sup>18</sup>

In order to benefit from the transfer exclusion, a claim must be filed with the respective assessor office in the county in which the subject property or properties is located.<sup>19</sup> The claim must be filed within three years after the transfer, or submitted within six months after the mailing date of the Notice of Supplemental Assessment from the Assessor's Office, but in either case, prior to the transfer of the property to a third party.<sup>20</sup> For transfers effected after January 1, 1998, the three year filing limitation is not in effect, though the exclusion will only affect future years or the lien date in the assessment year.<sup>21</sup> To benefit from the exception to the three-year statute of limitations, the parcel cannot have already been transferred to someone other than the parent or child.<sup>22</sup>

#### Grandparent-grandchild transfers:

In March of 1996, California voters passed Proposition 59, allowing that certain transfers of a principal residence between grandparents and grandchildren are excluded from change in ownership treatment.<sup>23</sup> The exclusion applies to transfers made on or after March 27, 1996 and applies only to transfers from grandparents to grandchildren, not vice versa.<sup>24</sup> If the transfer is made because someone dies, the date of death is considered to be the date the property is transferred.<sup>25</sup>

The exclusion from change in ownership reassessment treatment for grandparent to grandchild transfers applies only when both parents of the grandchild are deceased prior to the date of the transfer.<sup>26</sup> In the case where only the grandparent's child is deceased, the surviving in-law parent must have either been divorced or remarried before the date of transfer.<sup>27</sup> Qualified excludable property is the same under both the parent-child exclusion rules and the grandparent-grandchild rules.<sup>28</sup>

As with transfers between parents and children, in order to benefit from the grandparent-grandchild transfer exclusion, a claim must be filed with the respective assessor office in the county in which the subject property or properties is located.<sup>29</sup> The claim must be

filed within three years after the transfer, or submitted within six months after the mailing date of the Notice of Supplemental Assessment from the Assessor's Office, but in either case, prior to the transfer of the property to a third party.<sup>30</sup> For transfers effected after January 1, 1998, the three year filing limitation is not in effect, though the exclusion will only affect future years or the lien date in the assessment year.<sup>31</sup> To benefit from the exception to the three-year statute of limitations, the parcel cannot have already been transferred to someone other than the grandchild.<sup>32</sup>

#### Transfers of base year for persons 55 years or older:

In November 1986, California voters passed Proposition 60, a constitutional amendment that allows homeowners 55 or older to transfer an existing Proposition 13 value when they sell their current home and purchase or build a replacement property.<sup>33</sup> Proposition 60 creates an exclusion from change in ownership treatment by maintaining the property owner's current Proposition 13 value for the replacement property, which effectively establishes that no transfer subject to reassessment occurred.

In order to avoid reassessment treatment, the property owner must have used the original property as a principal residence.<sup>34</sup> The original property must be eligible for a Homeowner's Exemption.<sup>35</sup> The replacement property must be purchased or built within two years of the sale of the original property and must have an equal or less market value than the original property.<sup>36</sup> The replacement property must also be eligible for the Homeowner's Exemption.

Proposition 60 requires the original and replacement property to be located in the same county.<sup>37</sup> However, subsequent legislation, Proposition 90, was passed in 1988, allowing homeowners 55 years or older to transfer an existing Proposition 13 value to a replacement property located in a different county than the original property.<sup>38</sup> Not all counties have enacted local ordinances authorizing the transfer of Proposition 13 values from an original property located in a different county than the replacement property. Therefore, respective county assessor offices should be consulted before inter-county transfers are effected to ensure that the existing Proposition 13 value will be transferred to the replacement property. The transfer exclusion Proposition 60 is a one-time exclusion and cannot be used to transfer the Proposition 13 value more than once.<sup>39</sup> There is an exception to the one-time only exemption rule for persons 55 years or older who later become severely and permanently disabled.<sup>40</sup> Such persons may transfer the Proposition 13 value a second time to a new replacement property.<sup>41</sup>

In order to benefit from the transfer of base year exclusion, a claim must be filed with the respective assessor office in the county or counties in which the properties are located.<sup>42</sup> The claim must be filed within three years after the purchase or construction of the replacement property.<sup>43</sup>

## Conclusion

The exclusions from reassessment treatment discussed in this reference article are not all inclusive. Questions regarding the specific rules, requirements and forms can be addressed to the respective assessor offices in the county in which the property is located. General information regarding property tax exclusions is also available from the Board of Equalization (BOE) website, at [www.boe.ca.gov](http://www.boe.ca.gov). The following BOE technical information bulletins and forms may be of assistance in understanding the general requirements for certain property tax exclusions:

- Letter To Assessor #87/71, Proposition 60
- Letter To Assessor #88/10, Proposition 58 and 60
- Letter To Assessor #91/33, Proposition 110
- Letter To Assessor #97/02, Proposition 60, 90, and 110
- Letter To Assessor #98/23, Proposition 58 and 193
- Letter To Assessor #2003/077, Property Tax Rules 462.040 and 462.240
- Letter To Assessor #2004/023, Property Tax Rule 462.240
- Letter To Assessor #2005/062, Senate Bill 565
- Form BOE-58-AH, Claim for Reassessment Exclusion for Transfer Between Parent and Child
- Form BOE-58-G, Claim for Reassessment Exclusion for Transfer from Grandparent to Grandchild
- Form BOE-60-AH, Claim of Person(s) At Least 55 Years of Age for Transfer of Base Year Value to Replacement Dwelling
- Form BOE-305-AH, Application for Changed Assessment

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